

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5098 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PANDYA PRABHASHANKER MUGATLAL

Versus

STATE OF GUJARAT

Appearance:

MR MJ TRIVEDI for Petitioner

Ms. Talati, A.G.P. for respondents.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 02/02/98

ORAL JUDGEMENT

Learned advocate Mr. Trivedi appearing for the petitioner is not present before me. Heard Learned A.G.P. Ms. Talati for the respondents.

2. This petition arises out of a sale of an agricultural land bearing Survey No.119/1 ad-measuring 2 Acres 34 Gunthas situated at village Kumbharia of Taluka Deesa (hereinafter referred to as the Land) made in favour of the present petitioner. It appears that the

petitioner owned a piece of agricultural land being Survey No.82 ad-measuring 13 Gunthas at Kumbharia which he sold for profit on 12th April, 1971. He owned a guest house at Ambaji and was earning an annual income of Rs.40,000/- therefrom. On 22nd March, 1974 he purchased the Land by a Registered Sale Deed from one Dungariya Rama Chela, an agriculturist. A mutation entry being entry No.395 was made in this respect in the revenue records on 23th March, 1974. The said entry was certified on 15th June, 1974. The said sale was questioned by the Mamlatdar and Agricultural Land Tribunal Deesa and Tenancy Case No.203/84 was registered. After issuing notice to show-cause and after hearing the petitioner, the Mamlatdar and A.L.T. under his order dated 28.2.1985 recorded a finding that the petitioner was running a Guest House and earning an annual income of Rs.40,000/- therefrom. On the date of the sale the petitioner did not own any agricultural land in village Kumbhariya. The other agricultural land owned by the petitioner was situated at Village Vithoda, Taluka Kheralu which was some 15 kms. away from the Land. The petitioner did not obtain permission either from the Collector or any other authorised officer for such sale. The sale in respect of the Land, was therefore, found to have been made in contravention of Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Tenancy Act). The Mamlatdar also observed that the original vendor was not prepared to keep the land. He, therefore, proceeded to make an order to forfeit the land.

3. Feeling aggrieved, the petitioner preferred an appeal being Tenancy Appeal No.21/1985 before the Deputy Collector, Palanpur, who confirmed the order of the Mamlatdar. A revision application being Tenancy B.A.601 of 1985 preferred before the Gujarat Revenue Tribunal was also dismissed on 11th April, 1986. Feeling aggrieved the petitioner has preferred the present petition.

4. The gravamen of the petitioner's argument is that the petitioner was essentially an agriculturist. He originally owned certain agricultural lands at village Vithoda and also had certain lands at village Kumbharia. The petitioner who has been an agriculturist was not required to obtain a prior permission from the Collector as provided in Section 63 of the Tenancy Act. The sale in respect of the Land, therefore, could not have been held to be invalid and the land could not have been forfeited. It is further argued that the original vendor was not called upon by the Mamlatdar and the proceedings initiated by the Mamlatdar was, therefore, invalid. He

has further submitted that he owned the guest house in partnership with his brothers and that he had to share the profits therefrom with his brothers. His main source of income was agriculture. The decision rendered by the Mamlatdar and A.L.T. declaring the sale invalid and forfeiting the Land confirmed by the Deputy Collector and the Tribunal is, therefore, unlawful and requires to be quashed and set aside.

5. Section 2(2) of the Tenancy Act defines an 'agriculturist' to be a person who cultivates land personally. Section 2 (6) thereof defines the expression "to cultivate personally". Sub Section 6(iii) of Section 2, inter alia, requires that the entire area of land should be situated within the limits of a single village; or should be so situated that no piece of land is separated from another by a distance of more than 5 miles, or forms one compact block. Section 63 of the Tenancy Act expressly bars sale of any land or interest thereon in favour of a person who is not an agriculturist. Proviso thereof empowers the Collector to grant permission to sell on such conditions as may be prescribed. The further proviso forbids the Collector from granting such permission where land is being sold to a non agriculturist for agricultural purpose if the annual income of such person from other sources exceeds 5,000/rupees.

6. Considering the definition of the word 'agriculturist' and the phrase 'to cultivate personally' it is evident that the petitioner could not have been said to be cultivating the land situated at village Vithoda personally. If the petitioner were not cultivating the land situated at village Vithoda personally he could not have been said to be an 'agriculturist' on the date of the sale. Further, the annual income of the petitioner from the guest house run by him at Ambaji is found to be of Rs.40,000/-. Hence, in no circumstances the petitioner who was not an agriculturist could have purchased the Land without violating the provisions made in Section 63 of the Tenancy Act. Besides, the petitioner has not shown that he had actually cultivated the Land since 1974 or has improved the land in any manner. Further it is found that the petitioner did not own any agricultural equipment. Hence, in my view, the sale in respect of the Land was made in contravention of provisions of Section 63 of the Tenancy Act and has rightly been held to be invalid. It is also not true that no notice was issued upon the vendor. The Mamlatdar and A.L.T. has recorded a finding that the vendor was not ready to keep the land.

Thus, it is evident that notice was issued upon the vendor also.

7. In view of the above discussion, I do not find any merit in the challenge to the impugned order made by the Mamlatdar and the A.L.T. which is confirmed by the Deputy Collector and the Gujarat Revenue Tribunal. Petition is therefore dismissed. Rule is discharged. Ad-interim order is vacated. The petitioner shall bear the cost of this petition.

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